

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

South Carolina Coastal Conservation
League, *et al.*,

Plaintiffs,

v.

United States Army Corps of Engineers,
Charleston District, *et al.*,

Defendants.

Case No. 2:22-cv-02727-RMG

ORDER AND OPINION

This matter is before the Court on Federal Defendants’ motion for clarification of the Court’s August 29, 2023 Order. (Dkt. No. 29). Federal Defendants “seek clarification as to whether the Court ordered only FWS to produce an index of predecisional and deliberative documents that the agency excluded from its record, or if the Corps and EPA are also required to do so.” (Dkt. No. 29 at 2). Plaintiffs oppose the motion and argue that Federal Defendants are attempting to re-litigate issues under the guise of a motion for clarification. (Dkt. No. 30).

As the Court stated in its August 29, 2023 Order, “absent clear evidence to the contrary, an agency is entitled to a strong presumption of regularity, that it properly designated the administrative record.” *Pac. Shores Subdivision, California Water Dist. v. U.S. Army Corps of Engineers*, 448 F. Supp. 2d 1, 5 (D.D.C. 2006). Additionally, the Court stated that “[s]upplementation of the administrative record is the exception, not the rule.” *Id.*

In the August 29, 2023 Order, the Court found that “Plaintiffs have rebutted the presumption of administrative regularity” because they specifically identified records that the Fish and Wildlife Service (“FWS”) considered but were not included in the administrative record. (Dkt. No. 28 at 6). The Court’s entire analysis focused on the documents missing from the FWS record.

Accordingly, the Court's Order that the Federal Defendants produce a privilege log listing all documents withheld as predecisional and deliberative applies only to FWS. *See* (Dkt. No. 28 at 8). The other federal agencies are still entitled to their own presumption of regularity, which must be rebutted on the merits—not by implication.

AND IT IS SO ORDERED.

/s/Richard M. Gergel
Richard Mark Gergel
United States District Judge

September 14, 2023
Charleston, South Carolina